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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF SHERYL ANN TRAPP, et al.) No. 79-6584

RESPONDENT'S MEMORANDUM PURSUANT TO CLERK'S LETTER OF MARCH 29, 1982

1. Robert Emery Trapp, Jr. was born January 9, 1968 in the General Hospital and Medical Center, Kansas City, Missouri. The Juvenile Court of Jackson County, Missouri, on February 17, 1982, ordered the return of the custody of Robert Emery Trapp, Jr. to his natural parent, Mrs. Linda Mae Brault, and step parent, Mr. Robert Ray Brault. These three persons presently reside at 1013 Fuller, Kansas City, Missouri. The boy remains a ward of the court and the family receives counseling arranged by the Missouri Division of Family Services and monthly visitations by a social worker of the Division (Ms. Susan Williams, 615 East 13th Street, Kansas City, Missouri 64106).

Sheryl Ann Trapp was born April 25, 1969 in the St. Margaret Hospital, Kansas City, Kansas. Sheryl Ann Trapp was placed with foster parents David and Judy Bridgeman on August 5, 1974 and has lived continuously with them since then. The family now resides at P. O. Box 363, Mounds, Oklahoma 74044. The child remains a ward of the Juvenile Court of Henry County, Missouri. (social service workers: Ms. Sheryl Stone, P. O. Box 626, Clinton, Missouri 64735; Mr. Dennis Roan, P. O. Box 1068, Sapulpa, Oklahoma 74066).

DeeAnn Elaine Trapp was born April 17, 1977 in the Bethany Hospital, Kansas City, Kansas. DeeAnn Elaine Trapp was placed July 24, 1981 with foster parents James and Joan Millam, R.R. 1, Clinton, Missouri, 64735, where she now resides. She is also a ward of the Henry County Juvenile Court (Ms. Sheryl Stone). Both Sheryl and DeeAnn have monthly visits with their natural parents Linda Mae Brault in the Division of Family Service offices in Clinton, Missouri. Sheryl has expressed to the social worker a desire that these visits be discontinued. DeeAnn has expressed to the social worker a desire only that she not be required to live with her natural mother.

Duane Edwin Trapp was born September 8, 1972 in the Golden Valley Memorial Hospital, Clinton, Missouri. Duane Edwin Trapp was placed with foster parents Mr. and Mrs. Ronald Johnson on May 24, 1973 and has lived with them since then. They now reside at P. O. Box 1438, Evergreen, Colorado. The boy remains a ward of the Henry County, Missouri, Juvenile Court (social workers Ms. Sheryl Stone; and Ms. Susan Peale, 8550 West 14th Avenue, Lakewood, Colorado, 80215).

A petition for adoption of Sheryl Ann Trapp was filed in behalf of David and Judy Bridgman in the Henry County Circuit Court on October 8, 1974 and was dismissed on April 26, 1976 following the decision of the Missouri Court of Appeals in Kansas City setting aside the prior termination of parental rights order (528 S.W.2d 489). An attempt by Joseph and Lois Petty to adopt DeeAnn Trapp received identical disposition. No other formal attempts to adopt the Trapp children appear to have occurred.

2. Linda Mae (Everhart) Brault was born December 7, 1949 in the State of Kansas (presumably Kansas City). She married Robert Ray Brault in April, 1977. Robert Ray Brault was born November 6, 1955 in Kansas City, Missouri. Robert Emery Trapp was born August 18, 1939 in Kansas City, Missouri. The Missouri Division of Family Services last known address of Robert Emery Trapp is 3500 Palmer, Kansas City, Missouri. The social worker believes that he has little if any interest in the children borne by Linda. The parental rights of Linda Brault or Robert Trapp to their four children have not been terminated, or modified otherwise than already indicated herein. Robert Ray Brault has been convicted of several minor criminal offenses. Linda Mae Brault was convicted of stealing less than $150.00 on August 14, 1980 and sentenced to 30 days in jail (execution suspended) and 2 years probation. (No. CR 80-1190, Jackson Co. Mo. Cir. Ct.).

3. § 211.031, RSMo was last amended in 1980 (S.B. 512, 80th G.A.; Mo. 1980, pp. 331-337; eff. 8-13-80). This amendment added the new language to the statute, to wit:

> 1. . . . [The juvenile court shall have exclusive original jurisdiction in proceedings:]
>
> * * *
>
> [(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:]
>
> (a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his home without sufficient cause, permission, or justification; or

* * *

(3) The child is charged with an offense not classified as criminal, or with an offense applicable only to children, except that, the juvenile court shall not have jurisdiction over any child sixteen years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony;

* * *

3. In any proceeding involving any child taken into custody in a county other than the county of the child's residence, the juvenile court of the county of the child's residence shall be notified of such taking into custody within seventy-two hours.

§ 211.031 RSMo 1981 Cum. Supp. (existing language retained by S.B. 512 bracketed)

§ 211.181, RSMo was also last amended by S.B. 512 (1980). The language thereby added to this statute was as follows:

[When a child is found by the court to come within . . . (§ 211.031-1(1)) . . . the court . . . finding

. . . its jurisdiction over the child . . . may . . .:

(1) Place the child under supervision in his own home or in the custody of a relative or other suitable person] after the court or a public agency or institution designated by the court conducts an investigation of the home, relative or person and finds such home, relative or person to be suitable. . . .

[(2) A public agency or institution authorized by law to care for children or to place them in family homes;] except that, such child may not be committed to the department of social services, division of youth services;

* * *

2. When a child is found by the court to come within . . . (§ 211.031-1(2)) . . . the court . . . finding . . . its jurisdiction over the child may . . .

* * *

(2) Commit the child to the custody of:

(a) A public agency or institution . . .; except that a child may be committed to the department of social services, division of youth services, only if he is presently under the court's supervision after an adjudication under . . . (§ 211.031-1(2) or (3)) . . .

* * *

3. When a child is found by the court to come within . . . (§ 211.031-1(3)) . . . the court . . . finding . . . its jurisdiction over the child . . . may . . .

* * *

(6) Order the child to make restitution or reparation for the damage or loss caused by his offense. In determining the amount or extent of the damage, the court may order the juvenile officer to prepare a report and may receive other evidence necessary for such determination. The child and his attorney shall have access to any reports which may be prepared, and shall have the right to present evidence at any hearing held to ascertain the amount of damages. Any restitution or reparation ordered shall be reasonable in view of the child's ability to make payment or to perform the reparation. The court may require the clerk of the circuit court to act as receiving and disbursing agent for any payment ordered;

(7) Order the child to a term of community service under the supervision of the court or an organization selected by the court.

* * *

§ 211.181 RSMo 1981, Cum. Supp. (Existing language retained by S.B. 512 in brackets).

The other changes to Chapter 211, RSMo in the 1980 legislative session related to he commitment or reference of mentally disordered children to the Department of Mental Health and would seem to have little relevance to the present case. §§ 211.201 et seq., RSMo 1980 Cum. Supp. (H.B. 1724, 80th G.A.; L.Mo. 1980, pp. 511-514).

The 1981 legislative session did not amend Chapter 211, RSMo.

The 1982 legislative session, which must adjourn on or before May 15, 1982, may very well enact H.B. 1171, etc. ". . . for the purpose of providing a more uniform system for the protection, reformation, and placement of certain children . . ." (bill title) which would amend Chapter 210, RSMo relating to child protection and reformation; §§ 211.041, 211.442, and 211.447 of Chapter 211, juvenile courts; and Chapter 453, the adoption code. However, it is not apparent that any of the amendments would particularly affect the issues in this appeal.

4. The docket sheet for In the Matter of Trapp Children, No. J887, Circuit Court of Henry County, Missouri (appealed thrice; 528 S.W.2d 489; 562 S.W.2d 172; 593 S.W.2d 193) reflects no pending attempts to terminate the natural parental rights in these children. A change of judge occurred after the Missouri Supreme Court decision and Circuit Judge Charles V. Barker of Bolivar, Missouri is now overseeing the various social worker supervision of Linda Mae Trapp's parenting of the oldest boy and the foster parenting of the three other children.

5. Except for the reunion the oldest child and the natural parent, respondent does not know of reasons why this appeal, wholly or partially, is now moot.

6. Santosky v. Kramer, No. 80-5889, March 24, 1982, appears to have rule that in termination of parental rights proceeding the standard of proof to support termination is one of clear and convincing evidence rather than a fair preponderance of the evidence. That has been the statutory law of Missouri since

at least 1957. § 211.447, RSMo (from S.B. 15, 69th G.A.; L.Mo. 1957, pp. 642-659). The standard of proof necessary to support a judicial deprivation of a natural parent's physical custody of a child due to abuse or neglect is not expressly stated in the statutes, particularly, §§ 211.031, 211.171, 211.181, although this direction is given:

> The practice and procedure common in equity shall govern all proceedings in the juvenile court. § 211.171-6.

This direction may invoke the following statute:

> In cases tried upon the facts without a jury, . . . the court shall render such judgment as it thinks right upon the law and the evidence. . . . § 510.310, RSMo.

It does not appear that Santosky has decided that state laws authorizing courts to temporarily separate natural parent and child due to suspected or confirmed abuse or neglect are also subject to the clear and convincing evidence standard of proof.

Respectfully submitted,

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Attorneys for Respondent
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 16th day of April, 1982, to:

James L. Muller
Legal Aid of Western Mo.
1103 Grand Ave.
Kansas City, MO 64106

Louren R. Wood